IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3707 of 2006
Date of decision : 12.10.2006.

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Parties Name

Giani Ram

..... Appellant

vs.

Amar Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Atul Lakhanpal, Advocate
for the appellant.

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S.N. Aggarwal, J.

Giani Ram-appellant constructed his house on a plot measuring 1 Kanal 1 Marla situated in Khasra No. 1522, Khewat No. 738 Khatouni No. 977 situated in village Shankarpura Majra, Uklana. He had left a 10 ft. wide area on the eastern side of his house. The respondents were interfering in the peaceful possession of the plaintiff-appellant over his house for which he filed a suit for permanent injunction against the respondents seeking to restrain them from interfering in his peaceful possession.

The respondents alleged that 10 ft. wide area on the eastern side of the house of Giani Ram – plaintiff-appellant was a public

street and a thoroughfare. It was not owned by Giani Ram. Nor it was a part of his house. It was alleged that Giani Ram is encroaching upon the public street. Hence, dismissal of the suit was prayed.

Issues were framed. The parties led the evidence. The learned trial Court held that 10 feet wide area was a public street and Giani Ram- plaintiff-appellant was encroaching upon the street and dismissed the suit vide judgment and decree dated 11.12.2002.

The appellant filed an appeal in the learned Lower Appellate Court. The learned Lower Appellate Court upheld the finding of fact recorded by the learned trial Court and dismissed the appeal vide judgment and decree dated 25.8.2006.

Hence, the present appeal.

The submission of the learned counsel for the appellant was that the area was demarcated by the revenue officials and the demarcation report was proved on the file as Exhibit P-1. As per this report, the site in dispute was a part of the house of the appellant. Both the Courts below have not appreciated this piece of evidence. The perusal of the judgments of the Courts below reveal that another Local Commissioner was appointed by the Court, who submitted his report Exhibit D-2. As per this report, the plaintiff-appellant had constructed his house in an area measuring 649 sq. yds., while the area of the plot owned by him was only 1 Kanal 1 Marla i.e. 635.25 sq. yds. This, therefore, revealed that the plaintiff-appellant was already in possession of more area and the 10 ft. wide area on the eastern side of his house was not a part of his house. Rather it was a street.

It was also observed by the Local Commissioner in his report that the public water supply line was installed underneath the ground in the disputed area. The electric wires also passed through this street and electric poles were also installed in the said street. These circumstances clearly indicated that the site in dispute was a public street and not a part of the private house of the plaintiff-appellant. This report was accepted by both the Courts below.

It was further submitted by the learned counsel for the appellant that the appellant was in settled possession of the area in dispute and therefore, he could be dispossessed only in accordance with law and not otherwise.

This submission has been considered. The possession of the plaintiff-appellant over the site in dispute is not a settled possession. He was only in the process of encroaching upon the public street and therefore, he is not entitled to any injunction, even as per the law laid down by the Hon'ble Supreme Court, as the possession of the plaintiff-appellant over the site in dispute is not a settled possession.

For the reasons discussed above, I find no ground to disturb the concurrent finding of fact recorded by both the Courts below.

No substantial question of law arises.

No merits. Dismissed.

(S.N.Aggarwal)
Judge

12.10.2006.
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